

REMARKS

Claims 1-35 are pending in this application including independent claims 1, 13, and 21. Claims 1 and 13 have been amended. Support for the foregoing amendments to the claims can be found in the specification and drawings as originally filed. No new matter has been added. Favorable reconsideration and allowance of the pending claims are requested.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

Claims 1-20 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully traverse and request reconsideration and withdrawal of the § 112, first paragraph, rejection.

According to MPEP § 2163.02, the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed.¹ An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention.² The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.³

As set forth in MPEP § 2163(II)(A)(3)(b), the examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the original disclosure a description of the invention defined by the claims.⁴ To comply with the written description requirement, each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure.

¹ See MPEP § 2163.02 citing *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991).

² See MPEP § 2163.02 citing *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

³ See MPEP § 2163.02.

⁴ See MPEP § 2163(II)(A)(3)(b) citing *Wertheim*, 541 F.2d at 263, 191 USPQ at 97 ("[T]he PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.").

In this case, at issue is whether persons skilled in the art would not recognize in the original disclosure a description of “available options allowing the seller to choose to receive all of the remaining proceeds of the sale.” Applicants submit that the original disclosure clearly supports such limitation either expressly, implicitly, or inherently.

Initially, it is noted that the present application is a continuation-in-part of United States Patent Application Serial Number 09/967,171 (“the parent application”) which was filed on September 27, 2001 and is incorporated by reference into the present application. Accordingly, the original disclosure includes the subject matter of the parent application.

The parent application describes a system for providing logistics for a sale of goods that, among other things, provides a “donate to charity” option offered to the seller. According to this option, if the last sale time passes and the tickets still have not been sold, the system of the parent application will automatically have the tickets donated to a charitable cause, without charge to the seller. *See e.g.*, paragraph [0055] of the parent application.

As described in the parent application, when the tickets are sold, the system automatically arranges and/or provides for all of the necessary financial logistics for the sale of goods to the buyer. Namely, the system of the parent application authorizes the sale amount on the buyer's credit card; notifies the seller of the proposed purchase and receives seller confirmation; charges the buyer's credit card; collects funds from the credit card transaction; and deducts a fee and transfers the remaining amount of the sale to the seller. *See e.g.*, paragraph [0071] of the parent application.

In view of the above, Applicants submit that the original disclosure clearly supports “allowing the seller to choose to receive all of the remaining proceeds of the sale” at least by incorporation by reference of the subject matter of the parent application.

Moreover, Applicants submit that the original disclosure also supports “allowing the seller to choose to receive all of the remaining proceeds of the sale” in at least paragraph [0079] and paragraph [0089] of the specification of the present application. For example, as described in paragraph [0079] of the present application:

Upon receipt of an affirmative authorization, system 10 proceeds to step 54, where it automatically and electronically notifies the seller that the tickets have been sold (e.g., by e-mail notification). At such time, system 10 requests the seller to confirm (e.g., by return e-mail, or via a web page) that the tickets are still available and that the seller will be able to complete the transaction. Once the seller has confirmed the transaction, the system 10 automatically and electronically charges the buyer's credit card, as shown in step 56. In step 58, the system 10 collects the funds by having them electronically transferred into a conventional merchant account in a selected bank. Finally, in step 60, system 10 automatically deducts any transaction fees charged by the owner or operator of system 10, and directs the remaining proceeds to the seller in a conventional manner (e.g., by issuing a certified check to the seller, or by wiring electronic funds to the seller). It should be appreciated that each of the steps 56, 58 and 60 may be performed and/or facilitated by use of one or more online payment processing providers or companies that have relationships with the operator or owner of system 10. In the preferred embodiment, the payment providers' systems are electronically integrated with system 10, thereby simplifying the transactions.

Furthermore, as described in paragraph [0089] of the present application:

In step 86, the seller accesses system 10 in a conventional manner, such as through a Web site implementing system 10. The seller navigates through the site and locates the event for which the seller has tickets. After the seller selects the event, the system 10 requires the seller to register and login, as shown in step 88. The system 10 also receives a description of the tickets from the seller and confirms the proposed sale. After a purchase is made by a buyer, the system 10 notifies the seller, requests a confirmation from the seller that the seller has the tickets and can complete the transaction, and provides the seller with available courier pickup and drop-off options, as shown in step 90. Once the delivery of the tickets has been completed, system 10 provides payment to the seller (e.g., by check or electronic wire) minus an operating fee, as shown in step 92.

Applicants submit that the present application fully supports the functionality of the system described in the parent application and further expands upon the functionality of the system described in the parent application by including an additional option for donating at least a portion of the proceeds of the sale to a third party, such as a charitable or nonprofit entity, and by including functionality for conducting the sale using a raffle.

In view of the above, Applicants submit that the original disclosure clearly supports and describes an online marketplace system for the sale of goods that allows the user to choose to receive all the remaining proceeds of a sale and that allows the user to select to donate at least a portions of the remaining proceeds of the sale to a third party.

For at least the reasons set forth above, Applicants submit that persons skilled in the art⁵ clearly would have understood and recognized, at the time the patent application was filed, either an express, implicit, or inherent description of “available options allowing the seller to choose to receive all of the remaining proceeds of the sale.”

Accordingly, Applicants respectfully request reconsideration and withdrawal of the § 112, first paragraph, rejection of claims 1-20.

Furthermore, Applicants submit that the original disclosure clearly supports and describes an online marketplace system for the sale of goods that allows the user to choose to receive all of the remaining proceeds of the sale if the one or more goods are sold before a last sale time passes and automatically donate the one or more goods to a third party designated by the seller if the last sale time passes and the one or more goods have not been sold or choose to donate at least a portion of the remaining proceeds of the sale to the third party designated by the seller if the one or more goods are sold before the last sale time passes. Accordingly, Applicants submit that claims 1 and 13, as amended, are fully supported by the original disclosure.

Claim Rejections – 35 U.S.C. § 112, Second Paragraph

Applicants respectfully traverse and request reconsideration and withdrawal of the § 112, second paragraph, rejection of claims 1-20 in view of the foregoing amendments to claims 1 and 13.

⁵ Generally, there is an inverse correlation between the level of skill and knowledge in the art and the specificity of disclosure necessary to satisfy the written description requirement. Information which is well known in the art need not be described in detail in the specification. See, e.g., *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379-80, 231 USPQ 81, 90 (Fed. Cir. 1986). If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating “the description need not be in *ipsis verbis* [i.e., “in the same words”] to be sufficient”).

Claim Rejections – 35 U.S.C. § 103

Claims 1-7, 9-11, and 13-20

Claims 1-7, 9-11, and 13-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the WebCharity.com Webpage (“WebCharity”) in view of Official Notice. Applicants respectfully traverse this rejection.

When addressing independent claims 1 and 13, the Office Action continues to rely on portions of WebCharity related to providing proceeds from charity auctions to nonprofit organizations. The Office Action also takes Official Notice that it is well known in the auction arts for the seller to maintain all the proceeds in an auction.

Although Applicants disagree with the current grounds of rejection, independent claims 1 and 13 have been further amended in order to advance prosecution. Applicants submit that the features recited by amended independent claims 1 and 13 clearly distinguish over the teachings of WebCharity.

For instance, WebCharity and the Official Notice clearly do not provide a seller interface as recited by amended independent claims 1 or 13. Namely, there is no teaching or suggestion provided by WebCharity or the Official Notice of a seller interface that presents available options for directing the remaining proceeds of the sale, the available options allowing the seller to:

choose to receive all of the remaining proceeds of the sale if the one or more goods are sold before a last sale time passes and automatically donate the one or more goods to a third party designated by the seller if the last sale time passes and the one or more goods have not been sold, or

choose to donate at least a portion of the remaining proceeds of the sale to the third party designated by the seller if the one or more goods are sold before the last sale time passes.

Furthermore, Applicants submit that there is no teaching, suggestion, or motivation to modify WebCharity to include all of the features recited by amended independent claims 1 or 13.

In particular, Applicants submit that modification of WebCharity to include all of the features recited by amended independent claims 1 or 13 would be contrary to the explicit teachings and principal of operation of WebCharity. For instance, Applicants submit that the modification of WebCharity as suggested by the Office Action to allow a user to enter zero as a percentage to donate is clearly contrary to the explicit teachings and principal of operation of WebCharity.

The rationale provided by the Office Action is that because WebCharity does not say that the percentage to donate cannot be zero, WebCharity must therefore allow the option of entering zero. Applicants submit that this rationale is clearly improper. Namely, the WebCharity reference must be relied upon only for what it discloses, teaches, or suggests and cannot be relied upon for what it does not disclose, does not teach, and does not suggest.

Applicants submit WebCharity clearly does not disclose, teach, or suggest allowing goods to be listed without any proceeds to be provided to a charity because WebCharity is directed only to providing proceeds of auctions to charity. WebCharity also does not disclose, teach, or suggest allowing a seller to initially list goods with the proceeds to be provided to a charity and then to back out of the donation entirely and keep the proceeds. To modify WebCharity as suggested by the Examiner would be to remove its charitable donation functionality and render WebCharity unsatisfactory for its intended purpose.

In contrast to WebCharity, the present application supports and expands upon the functionality of the system described in the parent application by providing an additional option for making a charitable donation. And, because the system allows the seller to receive all of the remaining proceeds of a sale in some cases, sellers that visit an online marketplace without initially intending to donate are presented with the opportunity to make a donation and may choose to do so.

Among their other elements, amended independent claims 1 and 13 recite allowing the seller to choose to receive all of the remaining proceeds of the sale if the one or more goods are sold before a last sale time passes and automatically donate the one or more goods to a third party designated by the seller if the last sale time passes and the one or more goods have not been sold. Amended independent claims 1 and 13 also recite

allowing the seller to choose to donate at least a portion of the remaining proceeds of the sale to the third party designated by the seller if the one or more goods are sold before the last sale time passes. Applicants submit that WebCharity and the Office Notice clearly do not disclose, teach, or suggest such features and are insufficient to render amended independent claims 1 or 13 obvious under § 103(a).

For at least the foregoing reasons, Applicants submit that amended independent claims 1 and 13 are allowable over WebCharity and the Official Notice and that claims 2-7, 9-11, and 14-20 are also allowable by virtue of their dependency from allowable claims, as well as on their own merits.

Accordingly, Applicants respectfully request reconsideration and withdrawal the § 103(a) rejection of claims 1-7, 9-11, and 13-20.

Claims 8, 12, 21-28, 32 and 33

Claims 8, 12, 21-28, 32, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WebCharity in view of the Official Notice in view of United States Published Patent Application (USPPA) 2002/0152130 to Salls (“Salls”). Applicants respectfully traverse this rejection.

Applicants submit that WebCharity and the Official Notice clearly do not disclose, teach, or suggest all of the features of amended independent claim 1. Applicants further submit that Salls also does not describe the features recited by amended independent claim 1 and does not remedy the deficiencies of WebCharity and the Official Notice with respect to amended independent claim 1.

Applicants also submit that that there is no teaching, suggestion, or motivation to modify WebCharity and/or Salls to include all of the recited features of independent claim 1. In particular, Applicants submit that modification of WebCharity to include all of the features recited by amended independent claim 1 would be contrary to the explicit teachings and principal of operation of WebCharity.

Consequently, even if WebCharity, the Official Notice, and Salls could be combined, which Applicants do not admit, such combination still would fail to disclose, teach, or suggest all the features recited in independent claim 1. Therefore, Applicants submit that WebCharity, the Official Notice, and Salls are insufficient to render amended

independent claim 1 obvious regardless of whether such references are taken alone or in combination with each other.

For at least the foregoing reasons, Applicants submit that amended independent claim 1 is allowable over WebCharity, the Official Notice, and Salls that dependent claims 8 and 12 are also allowable by virtue of their dependency from allowable claims, as well as on their own merits.

Regarding independent claim 21, Applicants submit that WebCharity, the Official Notice, and Salls do not disclose a user interface as recited. Namely, there is no teaching or suggestion in WebCharity, the Official Notice, and/or Salls of a user interface for receiving information from a first party comprising a description of one or more goods offered for raffle, the user interface providing the first party with available options for directing proceeds of the raffle including options for receiving proceeds of the raffle and for donating proceeds from the raffle to a third party.

WebCharity, the Official Notice, and/or Salls also do not disclose, teach, or suggest receiving an option to donate proceeds from the raffle selected by the first party via the user interface prior to conducting the raffle or donating the proceeds from the raffle tickets to the third party on behalf of the first party in accordance with the option selected by the first party.

Moreover, while Salls describes selecting a winning ticket number, Applicants submit that Salls clearly does not disclose, teach, or suggest creating a record of buyers weighted according to the number of raffle tickets purchased by each buyer. The Office Action alleges that FIGS. 10-13 and related text, reproduced below, disclose this feature.

[0041] FIG. 10, illustrates a flow chart listing the overall flow for conducting an on-line raffle session. Step 74 includes the registration of the raffle article and the registrant. The registrant submits an article for raffling for various reasons, in particular, to receive full price for his article instead of having to pay a commission from the sale of the article. Step 74 includes creating an article and registrant account for registering and tracing the article. Step 76, includes placing the article in the on-line raffle directory for review and to begin the raffle session. Step 77, simultaneously or thereafter, of step 74, an interested individual or entity registers as a ticket purchaser and creates a ticket purchaser account, step 78 and at any time the ticket purchaser can view the on-line raffle directory to find the article the ticket purchaser wants to purchase a ticket

for, step 79. The preferred embodiment would be for a ticket purchaser to view the on-line directory and be able to view the article through a photograph, graphical picture and/or a video image which could allow a ticket purchaser to take a virtual tour of the article. After the ticket purchaser views the directory and makes their choice of what article or articles the ticket purchaser intends to purchase tickets for, the raffle session is executed, step 80 and when 100% threshold raffle price is reached, step 81 the raffle closes and the ticket numbers are transferred to an electronic ticket selector process for winning ticket selection, step 82 and selects a winning ticket, step 83. After the winning ticket selection the execution of the winning ticket process, step 84 begins, with notification of the winner, transferring the article to the winner and the execution of the contract process, step 85 begins where the article registrant's contract is executed and the registrant receives full payment for the article submitted and raffled.

[0042] FIG. 11, illustrates a flow chart of step 78 of FIG. 10. Create ticket purchaser account 78 starts with submitting a ticket purchaser account creation form, step 86 by the ticket purchaser going on-line from a remote computer, wherein, the remote computer browser allows the ticket purchaser to access the account creation computer to retrieve the account creation form. after the ticket purchaser opens the account, the ticket purchaser receives a new ticket purchaser account confirmation message, step 87. The ticket purchaser then confirms all the information on the new account, step 89 and the main computer which creates a registration record in the ticket purchaser data base, step 90. The record is secured from remote access, step 91 to prevent any remote access of a ticket purchaser account without the proper identification number.

[0043] FIG. 12, illustrates a flow chart of step 75 in FIG. 10. Create article and registrant account 75 begins with the registrant going on-line from a remote computer, wherein, the remote computer browser allows registrant to access the account creation computer and retrieve an account creation form. After retrieving the account creation form registrant submits the account creation form, step 92 and receives a new account confirmation message, step 93. The article is then placed simultaneously, in the on-line raffle directory, step 94 so it can be viewed by ticket purchasers. Registrant then confirms the new account, step 95 and receives a registration message, step 96 from the central computer. The central computer creates a registration record in the article and registrant data base, step 97. The article and registrant record is then secured from remote access by remote viewers, step 98 to prevent any remote unauthorized access to article and registrant account information.

[0044] FIG. 13, illustrates a flow chart of step 80 of FIG. 10. The raffle session begins with the submitted article, step 99 which has been

registered and entered into the on-line raffle directory. Ticket purchasers purchase tickets, step 100 and determine whether the account is valid. The query results indicate is a ticket purchaser has a valid account, step 102. If the answer is NO,-step 104 the central computer executes step 103, and notifies the ticket purchaser that the account is invalid. The ticket purchaser then validates his account or creates a new account, step 101. The ticket purchaser may have failed to add sufficient funds to the account or needs to create a new account. After validation or creation of a new account, the raffle ticket purchaser retries to purchase tickets again, step 100. If the ticket purchaser account is valid and is indicated by a YES, step 105 the ticket purchase is recorded and matched to a particular article, step 106. After the 100% raffle price threshold is reached, step 81 and a winning ticket is selected, step 83, the winning ticket number process is executed and the winner is notified, step 84, and the article is transferred to the winner. Simultaneously, the contract for the article process is executed and the registrant is notified and paid full price for the article raffled.

Applicants submits the above portions of Salls clearly do not disclose, teach, or suggest creating a record of buyers weighted according to the number of raffle tickets purchased by each buyer.

In view of the above, Applicants submit that WebCharity, the Official Notice, and Salls do not disclose, teach, or suggest all of the features of independent claim 21. Consequently, even if WebCharity, the Official Notice, and Salls could be combined, which Applicants do not admit, such combination still would fail to disclose, teach, or suggest all the features recited in independent claim 21. Therefore, Applicants submit that WebCharity and Salls are insufficient to render independent claim 21 obvious regardless of whether such references are taken alone or in combination with each other.

Furthermore, Applicants submit that there is no teaching, suggestion, or motivation to modify WebCharity and/or Salls to include all of the features recited by amended independent claim 21. In particular, Salls is directed to a service that conducts an on-line raffle for an article and pays the owner the full asking price for article raffled. While Salls mentions raffles conducted on-line over the Internet by non-profit organization in the description of the related art, Salls, in fact, teaches away from such non-profit raffles. Furthermore, the abstract of Salls does not mention raising money for charity. Therefore, Applicants submit that modification of Salls to include all of the

features recited by amended independent claim 21 would be clearly contrary to the explicit teachings and principal of operation of Salls.

For at least the foregoing reasons, Applicants submit that amended independent claim 21 is allowable over WebCharity, the Official Notice, and Salls that dependent claims 22-28, 32, and 3 are also allowable by virtue of their dependency from allowable claims, as well as on their own merits. Accordingly, Applicants respectfully request reconsideration and withdrawal the § 103(a) rejection of claims 8, 12, 21-28, 32, and 33.

Claims 29-31

Claims 29-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WebCharity in view of the Official Notice, in view of Salls and further in view of United States Patent Number 5,752,025 to Shakib et al. (“Shakib”). Applicants respectfully traverse this rejection.

As described above, WebCharity, the Official Notice, and Salls fail to disclose, teach, or suggest all of the features recited by independent claim 21. Applicants further submit that Shakib also does not describe such features and fails to remedy the deficiencies of WebCharity, the Official Notice, and Salls with respect to independent claim 21.

Consequently, even if WebCharity, the Official Notice, Salls, and/or Shakib could be combined, which Applicants do not admit, such combination still would fail to disclose, teach, or suggest all the features recited in amended independent claim 21. Further, there is no teaching, suggestion, or motivation to modify WebCharity, the Official Notice, Salls, and/or Shakib to include all of the recited features of amended independent claim 21. Therefore, WebCharity, the Official Notice, Salls, and/or Shakib are insufficient to render amended independent claim 21 obvious regardless of whether such references are taken alone or in combination with each other.

For at least the foregoing reasons, Applicants submit that amended independent claim 21 is allowable over WebCharity, the Official Notice, Salls, and/or Shakib and that dependent claims 29-31 are also allowable by virtue of their dependency from an allowable claim, as well as on their own merits. Accordingly, Applicants respectfully request reconsideration and withdrawal the § 103(a) rejection of claims 34 and 35.

Claims 34 and 35

Claims 34 and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WebCharity in view of the Official Notice, in view of Salls and further in view of USPPA 2001/0047290 to Petras et al. (“Petras”). Applicants respectfully traverse this rejection.

As described above, WebCharity, the Official Notice, and Salls fail to disclose, teach, or suggest all of the features recited by independent claim 21. Applicants further submit that Petras also does not describe such features and fails to remedy the deficiencies of WebCharity, the Official Notice, and Salls with respect to independent claim 21. Further, there is no teaching, suggestion, or motivation to modify WebCharity, the Official Notice, Salls, and/or Petras to include all of the recited features of independent claim 21.

Consequently, even if WebCharity, the Official Notice, Salls, and/or Petras could be combined, which Applicants do not admit, such combination still would fail to disclose, teach, or suggest all the features recited in independent claim 21. Therefore, WebCharity, the Official Notice, Salls, and/or Petras are insufficient to render independent claim 21 obvious regardless of whether such references are taken alone or in combination with each other.

For at least the foregoing reasons, Applicants submit that independent claim 21 is allowable over WebCharity, the Official Notice, Salls, and/or Petras and that dependent claims 34 and 35 are also allowable by virtue of their dependency from an allowable claim, as well as on their own merits.

Accordingly, Applicants respectfully request reconsideration and withdrawal the § 103(a) rejection of claims 34 and 35.

Conclusion

It is believed that claims 1-35 are in condition for allowance. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicants do not otherwise concede, however, the correctness of the Office Action with respect to any of the limitations of the independent claims and dependent claims discussed above. Accordingly, Applicants hereby reserve the right to make additional arguments as may be necessary to further distinguish the claims from the cited references, taken alone or in combination, based on additional features contained in the independent or dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application. The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17.

Respectfully submitted,

/Robert V. Racunas/
Robert V. Racunas, Reg. No. 43,027
Under 37 CFR 1.34(a)

Dated: April 9, 2010

RACUNAS LAW LLC
C/O Intellevate
P.O. Box 52050
Minneapolis, MN 55402